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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 795

ROBERT R. KAUFMAN,

Petitioner,

v.

THE ASSOCIATION OF THE
BAR OF THE CITY OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, FIRST DEPARTMENT, OF THE SUPREME COURT OF THE STATE OF NEW YORK

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PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, FIRST DEPARTMENT, OF THE SUPREME COURT OF THE STATE OF NEW YORK

Petitioner prays that a writ of certiorari issue to review the orders of the Appellate Division, First Department, of the Supreme Court of the State of New York, entered on February 3, 1966, intermediate orders for rehearing and re-argument, and the order entered on May 4, 1967 in the above entitled case.

OPINION BELOW

The opinion of the court below with respect to the order of February 3, 1966, is reported at 25 A.D.2d 48, 266 N.Y.S. 2d 958. No opinions were written in connection with the other orders.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3). An order of disbarment was entered by the Appellate Division on February 3, 1966. On March 31, 1966, the Court of Appeals of the State of New York entered an order denying petitioner leave to appeal. On June 16, 1966, the Appellate Division entered an order denying petitioner's motion for rehearing and other relief. On September 22, 1966, the Court of Appeals denied a motion to dismiss an appeal from the order of June 16, 1966, and dismissed as untimely a motion for leave to appeal. On October 25, 1966, the Court of Appeals granted a stay of the disbarment order pending the appeal from the orders of February 3, 1966 and June 16, 1966. On November 22, 1966, the Appellate Division denied a motion for reargument of its orders of February 3, 1966 and June 16, 1966. On December 30, 1966, the Court of Appeals dismissed appeals from the Appellate Division's orders of February 3, 1966 and June 16, 1966. On January 12, 1967, the Court of Appeals dismissed an appeal from the Appellate Division's order of November 22, 1966. On May 4, 1967, the Appellate Division entered an order denying petitioner's motion for recall of the disbarment order and other relief. On July 7, 1967, the Court of Appeals entered orders denying petitioner's motion for leave to appeal and dismissing the appeal taken as of right from the Appellate Division's order of May 4, 1967. By an order of this Court dated September 26, 1967, the time for filing a petition for a writ of certiorari was extended to and including November 6, 1967.

QUESTION PRESENTED

Whether disbarment is a criminal sanction within the scope of the Fifth Amendment, as incorporated in the Fourteenth Amendment with respect to state action, so that incriminating testimony obtained by coercion is precluded from use in a disciplinary proceeding.

CONSTITUTIONAL PROVISIONS

UNITED STATES CONSTITUTION, AMENDMENT V

No person * * * shall be compelled in any criminal case to be witness against himself * * *.

UNITED STATES CONSTITUTION, AMENDMENT XIV

Section 1 * * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *

STATEMENT OF CASE

Petitioner was admitted to practice as an attorney and counselor at law in the State of New York on February 2, 1938. Disciplinary proceedings were instituted on June 12, 1962 by the filing of a petition containing charges of professional misconduct. A supplemental petition containing additional charges was filed on November 17, 1964. A hearing on the charges was held before a referee who rendered his report dated September 24, 1965, sustaining six of the nine charges filed against petitioner. On February 3, 1966, the Appellate Division confirmed the report of the Referee and ordered petitioner disbarred from practice as an attorney and counselor at law in the State of New York effec-

tive February 3, 1966. The charges sustained related to obtaining funds purportedly to influence marital litigation in behalf of his client, failure to make proper disclosure with respect to fees received in a matrimonial proceeding, conversion of client funds, and issuance of checks for personal matters without sufficient funds on deposit to pay them.

On March 31, 1966, the Court of Appeals denied petitioner's motion for leave to appeal. 17 N.Y.2d 422, 216 N.E. 32. Petitioner thereafter moved for rehearing and other relief which the Appellate Division denied by order of June 16, 1966. During the pendency of appeal from the disbarment order of February 3, 1966 and the order of June 16, 1966 denying rehearing, the Court of Appeals on October 25, 1966, granted a stay of the disbarment order. 18 N.Y.2d 811, 221 N.E.2d 919. This appeal was dismissed on December 30, 1966. On January 12, 1967, the Court of Appeals dismissed petitioner's appeal from the Appellate Division's order of November 22, 1966 which denied his motion for reargument with respect to its prior orders on the ground that the order appealed from did not finally determine the proceeding within the meaning of the State Constitution. 19 N.Y.2d 597, 244 N.E.2d 743.

On March 10, 1967, petitioner moved for the recall of the disbarment order of February 3, 1966, reopening of the disciplinary proceeding, the suppression of all incriminating evidence obtained as a result of coercion and other relief. A supporting affidavit, sworn to by petitioner on March 8, 1967, stated that attorneys for the bar association demanded, under threat of disbarment for noncompliance, that petitioner divulge certain information, produce papers from his files in the office of the bar association committee on grievances, and furnish written and oral statements with respect to matters under investigation. Exemplifying the threats described by petitioner, he annexed to his affidavit a letter from the attorney for the Committee on Grievances which read as follows:

> We have received no reply to our letter of July 1, 1964. Unless the requested statement is received on or before September 1, 1964, we will have no alternative but to present formal charges, including a charge of failing to cooperate with the Committee, to the Committee on Grievances.

At the time of this letter "a charge of failing to cooperate" in a disciplinary investigation had been held an adequate ground for disbarment. *Cohen v. Hurley*, 366 U.S. 117. Petitioner's affidavit continued that as a result of these threats by attorneys for respondent he supplied various documents and information which were used as evidence and to obtain evidence against him in the disciplinary hearing. Petitioner's motion and supporting affidavit claimed that the threat of disbarment to obtain inculpatory evidence constituted a violation of the self-incrimination privilege of the Fifth and Fourteenth Amendments and requested the suppression of all evidence obtained as a result of this coercion.

Respondent's answering affidavit did not controvert petitioner's assertion that incriminating information had been obtained from him under the threat of disbarment, but argued that petitioner's constitutional rights were not violated because he had "never asserted the privilege against self-incrimination." The affidavit argued further that *Spevack v. Klein*, 385 U.S. 511, "in no way alters the attorney's duty to cooperate with an investigation of complaints against him, absent a claim of privilege." The affidavit also contended that there was sufficient evidence without petitioner's testimony and without the information provided by him during the preliminary disciplinary investigation to support the disbarment order. Accordingly, the affidavit asserted, "In these circumstances, even if respondent's reliance upon *Spevack* is deemed proper, no new reference is necessary. The Court can simply strike all evidence obtained from respondent, together with his own testimony, and can make a final determination predicated upon the revised record."

Petitioner's reply affidavit, dated March 15, 1967, stated that evidence with respect to all the disciplinary charges was obtained from him under the coercive threat of disbarment. Respondent's affidavit of March 17, 1967 in answer to petitioner's March 15th affidavit denied that any "improper demand or threat, etc., was ever made" and explained this denial as follows:

> Respondent was advised, when he failed to submit statements which he had been asked to furnish, that unless he did so an additional charge of failing to cooperate with the Committee on Grievances would be made. Such advice was perfectly proper inasmuch as respondent never asserted the privilege against self-incrimination as a basis for failing to cooperate with petitioner's investigation. As we pointed out in our affidavit in opposition, the attorney's duty to cooperate, absent a claim of privilege, has not been altered by any Supreme Court decision.

Petitioner's further affidavit of March 18, 1967 stated that respondent "demanded and so obtained exhibits and papers from deponent on each and every charge."

The Appellate Division did not adopt respondent's suggestion of striking all evidence obtained from petitioner, together with his own testimony, and making "a final determination predicated upon the revised record" but, on May 4, 1967 entered an order denying petitioner's motion in all respects. Nine days earlier, on April 25, 1967, in *In re Ungar*, 282 N.Y.S.2d 158, the court below had held that the privilege against self-incrimination "does not inhibit the use in a disciplinary proceeding of testimony" compelled under a grant of "immunity from prosecution" because "it has not been held that a disciplinary proceeding is in the nature of a criminal cause."

REASONS FOR GRANTING THE WRIT

1. Respondent's coercive demands, in the course of its investigation of petitioner's fitness to continue as a member of the bar, that petitioner furnish documents and information pertinent to possible disciplinary charges confronted petitioner with the alternative of providing his accuser with inculpatory evidence with respect to possible disbarment or being disbarred for his refusal to do so. Our adversary system of justice safeguarded by the Constitution prohibits placing a person in such a dilemma in a criminal case. Punishment cannot be imposed for refusal to furnish incriminating information in reliance upon the privilege. *Spevack v. Klein*, 385 U.S. 511; *Griffin v. California*, 380 U.S. 609. And, if incriminating information is furnished under threat of punishment for refusal to supply it, the information so coerced is not available for use as evidence in a criminal case. *Garrity v. New Jersey*, 385 U.S. 493; *Ullmann v. United States*, 350 U.S. 422. If a disciplinary proceeding is a "criminal case" within the scope of the privilege against self-incrimination, the refusal of the court below to suppress the compelled, incriminating evidence violated petitioner's rights under the Fifth and Fourteenth Amendments. Although the precise question has not been decided, the rejection by the court below of petitioner's invocation of the privilege appears inconsistent with decisions of this Court (1) holding civil forfeitures to be within the protection of the self-incrimination privilege and (2) holding disbarment and other disqualifications from employment to be the equivalent of criminal punishment in the context of other constitutional protections.

Although many decisions intimate an affirmative answer to the question whether a disbarment proceeding is a "criminal case" within the meaning of the Fifth Amendment's prohibition against compelled, self-incriminating testimony, none is dispositive on the point. In *Spevack v. Klein*, 385 U.S. 511, expressly overruling *Cohen v. Hurley*, 366 U.S. 117, the Court held that the privilege against self-incrimina-

tion is available to attorneys and that disbarment is a punishment which cannot be imposed for invoking the privilege and refusing to testify in an investigation of the conduct of attorneys. Since the privilege may have been invoked to avoid incrimination with respect to a statutory crime, the decision cannot be considered a holding that the privilege is available with respect to the sanction of disbarment. In *Kaye v. Coordinating Committee*, 386 U.S. 17, which involved a claim that use of compelled testimony in the disciplinary proceeding violated the privilege against self-incrimination, the Court, *per curiam*, vacated the disbarment order and remanded the case for reconsideration in light of *Spevack v. Klein*. Similarly, in *Zuckerman v. Greason*, 386 U.S. 15, rehearing denied, 386 U.S. 969, the Court, *per curiam*, vacated an order disbarring one attorney and suspending another which was based on the testimony and records of the attorney. But *Kaye* also involved, in addition to the use of compelled testimony in the disciplinary proceeding, the penalty of an adverse presumption because of his failure to testify. Similarly, *Zuckerman* involved the imposition of punishment [disbarment instead of suspension] for invoking the privilege as well as the use of enforced evidence. Since the Court wrote no opinions in these cases, the precise rationale of the decisions is left to speculation.

The question whether disqualification from federal employment is a criminal sanction within the protection of the privilege was raised but left unanswered in *Ullmann v. United States*, 350 U.S. 422, where the constitutionality of an immunity statute was assailed on the ground that the testimony compelled under a grant of immunity might result in disqualification from federal employment and other disabilities. Upholding the statute, the Court found it unnecessary to decide whether such disqualification was equivalent to criminal punishment for purposes of the self-incrimination privilege, on the rationale that a witness who is compelled to answer under the protection of immunity "has, of course, when a particular sanction is so sought to be imposed against him, the right to claim that it is criminal in nature." 350 U.S. at

431. Mr. Justice Douglas' dissenting opinion asserted, however, that "disabilities imposed by federal law [such as "ineligibility for employment in the Federal Government and in defense facilities, disqualification for a passport, the risk of internment, the risk of loss of employment"] are forfeitures within the meaning of our cases and as much protected by the Fifth Amendment as criminal prosecution itself." 350 U.S. at 440-441.

The rejection by the court below of petitioner's claim of privilege with respect to the penalty of disbarment appears to be at odds with the decisions of this Court holding civil forfeitures within the protection of the privilege. *Boyd v. United States*, 116 U.S. 616; *Lees v. United States*, 150 U.S. 476; *cf. Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 701. Certainly, forfeiture of the right to practice a profession is no less a penalty than forfeiture of property. The applicability of the privilege to property forfeitures was reaffirmed in *Spevack v. Klein* when the opinion of Mr. Justice Douglas referred to "the Board protection given the privilege" in *Boyd v. United States* which it described as a case "where compulsory production of books and papers of the owner of goods sought to be forfeited was held to be compelling him to be a witness against himself" (385 U.S. at 515). Mr. Justice Douglas also noted that the "views expounded in the dissents in *Cohen v. Hurley* [now overruled] need not be elaborated again." Among the "views" so "expounded" were those of Mr. Justice Black that the effects of disbarment were so severe as to entitle a lawyer to "the full benefit of the law of the land' " (366 U.S. at 147) and those of Mr. Justice Douglas that "taking away a man's right to practice law is imposing a penalty as severe as a criminal sanction" (366 U.S. at 153-154).

Numerous decisions of the Court hold disbarment or denial of the right to engage in other occupations equivalent to a criminal penalty for the purpose of other constitutional provisions. Disqualification from the practice of law, as well as the pursuit of other vocations, has been regarded as punishment for purposes of the Constitution's bill of attainder

and ex post facto prohibitions. *Ex parte Garland*, 4 Wall. 333, 377 (legislative denial of an attorney's right to practice "for past conduct can be regarded in no other light than as punishment for such conduct"); *Cummings v. Missouri*, 4 Wall. 277, 327 ("This deprivation [of right to pursue regular avocations] is punishment"); *United States v. Lovett*, 328 U.S. 303, 316 ("permanent proscription from any opportunity to serve the Government is punishment"); *United States v. Brown*, 381 U.S. 437 (disqualification from holding union office held punishment). Since disqualification from the pursuit of one's vocation appears to be no less a criminal punishment for purposes of the privilege against self-incrimination, rejection of the claim of the privilege by the court below with respect to disbarment warrants review by this Court.

2. Petitioner relied upon the privilege against self-incrimination in his motion of March 10, 1967, for recall of the disbarment order, reopening of the disciplinary proceeding, and suppression of evidence, filed approximately two months after the Court of Appeals on January 12, 1967, had dismissed petitioner's appeal "upon the ground that the order appealed from [order of November 22, 1966 which denied a motion for reargument with respect to the disbarment order and other orders in the proceeding] does not finally determine the proceeding within the meaning of the Constitution." 19 N.Y.2d 597, 224 N.E.2d 743. *Cohen v. Hurley*, 366 U.S. 117, which had upheld the right of a state to disbar an attorney for invoking the privilege was not overruled until January 16, 1967. *Spevack v. Klein*, 385 U.S. 511. The New York Court of Appeals had applied the doctrine of *Cohen v. Hurley* as late as December 1, 1965 in *Spevack v. Klein*, 16 N.Y.2d 1048, 213 N.E.2d 457; 17 N.Y.2d 490, 214 N.E.2d 373. *Kaye v. Coordinating Committee*, 386 U.S. 17, and *Zuckerman v. Greason*, 386 U.S. 15, had not been decided until February 13, 1967. Petitioner's motion invoking the privilege was made less than 30 days thereafter.

The overruling of *Cohen v. Hurley* in *Spevack v. Klein* may properly be regarded as a supervening event which en-

titled petitioner to raise the constitutional question by his motion of March 10. *State Farm Ins. Co. v. Duel*, 324 U.S. 154, 160-161; *Brinkerhoff-Faris Trust & Savings Co. v. Hill* 281 U.S. 673. In view of the holdings of controlling decisions at the time (*Cohen v. Hurley* and *Spevack v. Klein*) petitioner cannot be charged with having waived his constitutional rights by not having raised them at an earlier stage of the proceeding. "There is a presumption against a waiver of constitutional rights * * *, and for a waiver to be effective it must be clearly established that there was 'an intentional relinquishment or abandonment of a known right or privilege' ". *Brookhart v. Janis*, 384 U.S. 1, 4. If every reasonable presumption against the waiver of fundamental constitutional rights is indulged (*Johnson v. Zerbst*, 304 U.S. 458, 464; *Glasser v. United States*, 315 U.S. 60, 70), the "high standards of proof for the waiver of constitutional rights" to establish that "the waiver is made voluntarily, knowingly, and intelligently" (*Miranda v. Arizona*, 384 U.S. 436, 475) have obviously not been met.

3. The court below held in *In re Ungar*, 282 N.Y.S.2d 158, certiorari pending, No. 685, October Term, 1967, that the privilege "does not inhibit the use in a disciplinary proceeding," of compelled testimony because "it has not been held that a disciplinary proceeding is in the nature of a criminal cause." This view of the scope of the privilege provides a basis for the unexplained rejection of petitioner's constitutional claim in the present case. This construction of the privilege would also be operative in the reconsideration of *Kaye v. Coordinating Committee*, 385 U.S. 17, on the remand to the same court. The Appellate Division, Second Department, apparently adopted the same view in its initial reconsideration of *Zuckerman v. Greason*, 386 U.S. 15, rehearing denied, 386 U.S. 969, on the remand by this Court. Although evidence supplied by both attorneys involved had been used against them in a disbarment proceeding, Zuckerman had refused to turn over certain income tax information. Zuckerman had been disbarred and Haber suspended. On the remand, the Appellate Division modified its original order only to the extent of reducing Zuckerman's punishment

to suspension for the same period as Haber. The order remained unchanged as to Haber. It is clear that the Court eliminated the punishment it had imposed for Zuckerman's reliance on the privilege to refuse to turn over certain information but assumed that the privilege did not preclude use of self-incriminating evidence in the disbarment proceeding. *Zuckerman v. Greason*, 280 N.Y.S.2d 904. Because this result had been reached without affording the parties a hearing the Court of Appeals reversed (*Zuckerman v. Greason*, 19 N.Y.2d 977, 281 N.Y.S.2d 523, decided June 1, 1967), holding that "The reversal by the United States Supreme Court of the orders in the disciplinary proceedings, with remand to the Appellate Division, leaves room for interpretation. Consequently due process required notice to appellants and opportunity to be heard". The question of the propriety of admitting enforced testimony in the disbarment proceedings affecting these two attorneys is still before the New York courts.

The customary procedure in New York in disciplinary investigations involving attorneys apparently has been to require the attorney involved to supply the investigation agency with records and information relating to the matter under inquiry under threat of disbarment for refusal to do so. (See, e.g., in addition to the present case, *Cohen v. Hurley, supra; Spevack v. Klein, supra; Kaye v. Coordinating Committee, supra; Zuckerman v. Greason, supra.*) Under the ruling of the Appellate Division in the *Ungar* case the only change which would be required by this Court's decision in *Spevack v. Klein, supra,* is an offer of immunity from criminal prosecution if the privilege is invoked. Immunity may replace the privilege (*Ullmann v. United States*, 350 U.S. 422) and if a disbarment proceeding is not a criminal cause, as held by the court below, disbarment may be imposed for refusal to furnish incriminating evidence with respect to disbarment when immunity from criminal prosecution has been granted. See dissenting opinion of Mr. Justice White in *Spevack v. Klein*, 385 U.S. 511, 530. The doubtful validity of such a procedure in light of the closely related decisions of this Court

and the views expressed by some of its present members, as well as the number of pending cases in which the issue is pertinent, argues strongly for the desirability of an early resolution by this Court of the heretofore unresolved question whether a disbarment proceeding is a "criminal case" for purposes of the privilege against self-incrimination.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX

SUPREME COURT, APPELLATE DIVISION

First Department, December 1965

Bernard Botein, P. J.,
Charles D. Breitel,
Harold A. Stevens,
Samuel W. Eager,
Aron Steuer, JJ.

In the Matter
of
Robert R. Kaufman,
an Attorney.

Motion No. 9
December 7, 1965

Disciplinary proceedings instituted by The Association of the Bar of the City of New York. Respondent was admitted to the Bar on February 2, 1938, at a Term of the Appellate Division of the Supreme Court in the Second Judicial Department.

Michael Franck for petitioner (John G. Bonomi, attorney), The Association of the Bar of the City of New York

H. Elliot Wales for respondent.

PER CURIAM:

This is a motion to confirm the report of the referee which sustained charges of professional misconduct against the respondent.

Respondent, age 51 years, was admitted to practice February 1938 in the Appellate Division, Second Department. Proceedings were instituted against him June 12, 1962. Subsequently a supplemental petition was filed. In all a total of 9 charges were preferred of which one, charge No. 4, was discontinued, and charges 7 and 9 were not sustained by the referee. The charges which were sustained and upon which

petitioner moved to confirm the referee's report may be summarized briefly.

It was charged that respondent demanded and obtained from one William Barash, his client, $3,000 in cash over the fee charged on the representation that he could improperly influence marital litigation in behalf of his client and that he converted the proceeds of a check in the amount of $670 payable to Marilyn and William Barash, husband and wife; that he had made and caused his client, a Mrs. Serayder, to make a false statement in affidavits submitted by them in a matrimonial proceeding in which he represented Mrs. Serayder. That charge was sustained only to the extent that the referee found he failed to make proper disclosure.

There were two additional charges that he engaged in a course of conduct of issuing worthless checks. Respondent's contention that the checks were for personal matters and that all were eventually made good does not change the nature of the offense or invalidate the determination.

The final charge, sustained by the referee, as were the others referred to, was that the respondent converted to his own use without authority the sum of $5275 representing his client's share of a settlement in a personal injury action. The evidence amply supported the referee's findings and the report is confirmed.

The respondent has been guilty of professional misconduct which demonstrates his unfitness to continue in the practice of the law. The respondent should be disbarred.

ALL CONCUR.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 3rd day of February, 1966.

Present— Hon. Bernard Botein, Presiding Justice,
" Charles D. Breitel,
" Harold A. Stevens,
" Samuel W. Eager,
" Aron Steuer, Justices.

In the Matter
of
Robert R. Kaufman,
an Attorney.

5

The Association of the Bar of the City of New York, by Eric Nightingale, Esq., its attorney, having presented to this Court on the 12th day of June, 1962, a petition containing charges of professional misconduct against the above-named respondent, Robert R. Kaufman, who was admitted to practice as an attorney and counselor-at-law in the State of New York, on the 2nd day of February, 1938, at a term of the Appellate Division of the Supreme Court, Second Judicial Department, and having petitioned the Court to take such action upon such charges as in the judgment of said Court justice may require; and the respondent having appeared herein by his attorney, Rudolph Stand, Esq., and having interposed an answer to said petition, duly verified the 25th day of June, 1962, and the Court having duly made and entered an order on the 12th day of July, 1962, appointing Theodore R. Kupferman, Esq., as Referee herein to take testimony in regard to said charges and to report to this Court his opinion thereon; and thereafter and on the 17th day of November, 1964, The Association of the Bar of the City of New York, having presented to this Court a supplemental petition containing additional charges of professional misconduct against the above-named respondent and having

petitioned the Court to take such action upon such additional charges as in the judgment of said Court justice may require; and the respondent having appeared herein by his attorney, H. Elliot Wales, Esq., and having interposed an answer to said supplemental petition, duly verified the 18th day of November, 1964, and the Court having duly made and entered an order on the 1st day of December, 1964, appointing Theodore R. Kupferman, Esq., as Referee herein to take testimony in regard to said additional charges and to report to this Court his opinion thereon; and thereafter and on the 18th day of February, 1965, an order of this Court having been made and entered relieving Theodore R. Kupferman, Esq., as Referee herein, which appointment was contained in the orders of this Court entered on July 12, 1962 and December 1, 1964, and appointing Samuel C. Coleman, Esq., as Referee in the place and stead of Theodore R. Kupferman, Esq., and a stipulation having been entered into between the attorneys for the respective parties, dated January 25, 1965, that the record of the proceedings held to date before Theodore R. Kupferman, Esq., Referee, including the testimony of all witnesses, shall be binding in the same manner as if same had taken place before the new Referee; and the hearing, pursuant to said order of reference having been duly continued before Referee Samuel C. Colemen and the said Referee having duly heard the testimony and proofs tendered by the parties hereto, and having thereafter rendered his report thereon to this Court, which report was dated the 24th day of September, 1965, and was filed in the office of the Clerk of this Court on the 1st day of October, 1965;

And the petitioner thereafter and on the 7th day of December, 1965, having moved for an order confirming the Referee's report and adjudging the respondent guilty of professional misconduct and that the Court take such action herein as it might deem just and proper;

Now, upon reading the petition of The Association of the Bar of the City of New York, verified the 31st day of May, 1962, the affidavit of Eric Nightingale, Esq., annexed thereto,

sworn to the 29th day of May, 1962, the notice of presentation of said petition, dated the 31st day of May, 1962, with proof of due service thereof upon the respondent, the answer of the respondent to said petition, verified the 25th day of June, 1962, the order of this Court, dated the 12th day of July, 1962, appointing Theodore R. Kupferman, Esq., as Referee herein, all of which papers were duly filed in the office of the Clerk of this Court on the 12th day of July, 1962, the supplemental petition of The Association of the Bar of the City of New York, verified the 4th day of September, 1964, the affidavit of John G. Bonomi, Esq., annexed thereto, sworn to the 3rd day of September, 1964, the notice of presentation of said supplemental petition, dated the 4th day of September, 1964, with proof of due service thereof upon the respondent, the answer of the respondent to said supplemental petition, verified the 18th day of November, 1964, the order of this Court, dated the 1st day of December, 1964, appointing Theodore R. Kupferman, Esq., as Referee herein, all of which papers were duly filed in the office of the Clerk of this Court on the 1st day of December, 1964, the order of this Court entered on February 18, 1965, relieving Theodore R. Kupferman, Esq., as Referee herein, and appointing Samuel C. Coleman, Esq., as Referee in the place and stead of Theodore R. Kupferman, Esq., the stipulation of the attorneys for the respective parties, dated January 25, 1965, the report of Samuel C. Coleman, Esq., the Referee herein, dated the 24th day of September, 1965, together with the testimony taken by him and the exhibits offered in evidence, which were filed in the office of the Clerk of this Court on the 1st day of October, 1965; and upon reading and filing the notice of motion for an order confirming the report of the Referee and adjudging the respondent guilty of professional misconduct, dated the 26th day of October, 1965, with proof of due service thereof, and after hearing Mr. John G. Bonomi for the motion, and Mr. H. Elliot Wales opposed, and due deliberation having been had thereon; and the Court having unanimously found and decided that the respondent has been guilty of profes-

sional misconduct in his office of attorney and counselor-at-law, it is hereby unanimously

Ordered that the report of Samuel C. Coleman, Esq., the Referee herein, filed in the office of the Clerk of this Court on the 1st day of October, 1965, be, and the same hereby is, confirmed; and it is further unanimously

Ordered that the said Robert R. Kaufman be and he hereby is disbarred from practice as an attorney and counselor-at-law in the State of New York effective March 3, 1966; and it is further unanimously

Ordered that the name of said Robert R. Kaufman be struck from the roll of attorneys and counselors-at-law in the State of New York effective March 3, 1966; and it is further unanimously

Ordered that the said Robert R. Kaufman be and he hereby is commanded to desist and refrain from the practice of the law in any form, either as principal or agent, clerk or employee of another, effective March 3, 1966; and it is further unanimously

Ordered that the said Robert R. Kaufman be and he hereby is forbidden to appear as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority, effective March 3, 1966; and it is further unanimously

Ordered that the said Robert R. Kaufman be and he hereby is forbidden to give to another an opinion as to the law or its application or any advice in relation thereto effective March 3, 1966.

ENTER:

HYMAN W. GAMSO
Clerk

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 4th day of May, 1967.

Present– Hon. Bernard Botein, Presiding Justice
" Harold A. Stevens,
" Samuel W. Eager,
" Aron Steuer,
" Louis J. Capozzoli, Justices

In the Matter
of
Robert R. Kaufman,
An Attorney.

M-1558

The above-named respondent having moved this Court for an order vacating the order of disbarment of this Court, entered on February 3, 1966; reopening the hearings de novo before a different Referee; staying the operation and effect of the aforesaid order of disbarment; and for other relief,

Now, upon reading and filing the order to show cause, dated March 10, 1967, with proof of due service thereof, and the affidavits of Robert R. Kaufman, duly sworn to the 8th day of March, 1967, the 15th day of March, 1967, and the 18th day of March, 1967, in support of said motion, and the affidavits of Michael Franck, duly sworn to the 13th day of March, 1967, and the 17th day of March, 1967, in opposition thereto, and after hearing Mr. Robert R. Kaufman, appearing pro se, for the motion, and Mr. John G. Bonomi, attorney for The Association of the Bar of the City of New York, opposed,

It is ordered that the said motion be and the same hereby is denied in all respects.

ENTER:

HYMAN W. GAMSO
Clerk.

STATE OF NEW YORK

in Court of Appeals

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Seventh day of July A. D. 1967.

Present, Hon. Stanley H. Fuld, Chief Judge, presiding

1 Mo. No. 600
In the matter of
Robert R. Kaufman, an Attorney,
Appellant,
The Association of the Bar of
the City of New York,
Respondent.

A cross-motion for leave to appeal to the Court of Appeals &c. in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said cross-motion be and the same hereby is denied.

A copy

Gleason Kimball
Deputy Clerk

STATE OF NEW YORK,

in Court of Appeals

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Seventh day of July A. D. 1967.

Present, Hon. Stanley H. Fuld, Chief Judge, presiding.

1 Mo. No. 600
In the Matter of
Robert R. Kaufman, an Attorney,
Appellant,
The Association of the Bar of
the City of New York,
Respondent.

A motion having heretofore been made herein upon the part of the respondent to dismiss the appeal taken as of right by the appellant in the above cause to this Court and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is granted and the appeal dismissed, without costs, upon the ground that the order appealed from does not finally determine the proceeding within the meaning of the constitution.

A copy

Gleason Kimball
Deputy Clerk